

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRIAN SELBY S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-5620 RSM

**ORDER AFFIRMING AND  
DISMISSING THE CASE**

Plaintiff seeks review of the denial of his applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Plaintiff contends the ALJ erred by rejecting his symptom testimony. Dkt. 8. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

Plaintiff is 48 years old, has at least a high school education, and has worked as an industrial truck operator, stores laborer, and short order cook. Admin. Record (AR) 47. In April 2020, Plaintiff protectively filed applications for benefits, alleging disability as of July 31, 2017. AR 167–68, 182–83, 199, 204. Plaintiff's applications were denied initially and on reconsideration. AR 180, 196, 203, 211. After the ALJ conducted a hearing in February 2022 (AR 70–99), the ALJ issued a decision finding Plaintiff not disabled. AR 30–61.

## DISCUSSION

The Court may reverse the ALJ's decision only if it is legally erroneous or not supported by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court must examine the record but cannot reweigh the evidence or substitute its judgment for the ALJ's. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to more than one interpretation, the Court must uphold the ALJ's interpretation if rational. *Ford*, 950 F.3d at 1154. Also, the Court "may not reverse an ALJ's decision on account of an error that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

Plaintiff contends the ALJ erred in rejecting his symptom testimony. Dkt. 8 at 1–3.

Plaintiff testified to feeling nauseous and vomiting every day because of his gastroparesis. AR 91. He stated he gets exhausted and has to lay down when he gets sick, and that he has had this condition for the past five years. *Id.* Plaintiff also testified to having bipolar disorder and getting angry easily.<sup>1</sup> *Id.*

Where, as here, an ALJ determines a claimant has presented objective medical evidence establishing underlying impairments that could cause the symptoms alleged, and there is no affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to symptom severity by providing "specific, clear, and convincing" reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). "The standard isn't whether our court is convinced, but instead whether the ALJ's rationale is clear enough that it has the power to convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

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<sup>1</sup> Plaintiff also testified to other symptoms but challenges only the ALJ's evaluation of his gastroparesis and mental health symptoms. Dkt. 8. The Court will not consider matters that are not "specifically and distinctly" argued in the plaintiff's opening brief. *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir. 2008) (quoting *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003)). The Court will therefore only consider the ALJ's evaluation of this portion of Plaintiff's testimony.

1 In this case, the ALJ rejected Plaintiff's testimony regarding his gastroparesis based on  
2 his medication and treatment. AR 43. The record indicates Plaintiff has had gastroparesis since  
3 2015 and was prescribed medication and instructed to follow a gastroparesis diet to improve his  
4 condition. *See* AR 1586. Here, the ALJ found Plaintiff's symptoms improved with medication  
5 and worsened when noncompliant with this diet. AR 43. The effectiveness of medication and  
6 treatment is relevant to the evaluation of a claimant's alleged symptoms. 20 C.F.R. §§  
7 404.1529(c)(3), 416.929(c)(3). Further, "[f]ailure to follow prescribed treatment may 'cast doubt  
8 on the sincerity of the claimant's pain testimony.'" *Trevizo*, 871 F.3d at 680 (quoting *Fair v.*  
9 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

10 The ALJ's finding is supported by the record as it shows that when Plaintiff takes  
11 medication and follows a gastroparesis diet, his vomiting was controlled, and when he did not, he  
12 reported constant nausea and vomiting. *See* AR 1581, 1664, 1688. Plaintiff argues he did not  
13 improve because even with medication, he continued to experience daily nausea. Dkt. 8 at 2–3.  
14 However, the record shows his daily nausea was related to his noncompliance with the diet. AR  
15 1688 ("He is not following gastroparesis diet as previously recommended and continues to have  
16 nausea daily. He has not scheduled nutritional consultation for gastroparesis diet."). In his  
17 Opening Brief, Plaintiff argues he could not follow a gastroparesis diet because he was homeless  
18 and unable to prepare meals as required. Dkt. 8 at 2. The record shows Plaintiff was homeless  
19 for a period of time, but by April 2020, Plaintiff was residing with his girlfriend's family. AR  
20 1787, 383. Plaintiff later states in his Reply Brief that his homelessness was not a factor to his  
21 noncompliance with the diet, but argues it is "irrelevant" because he did not improve from  
22 medication and continued to experience nausea daily. Dkt. 15 at 2–3 (citing AR 1688). But  
23 again, Plaintiff's treatment notes indicate his daily nausea was related to his noncompliance with

1 the diet. AR 1688. Other than his former living condition—which Plaintiff has agreed is  
2 irrelevant to the issue —Plaintiff has not provided any reasons for his noncompliance. “Even  
3 when the evidence is susceptible to more than one rational interpretation, we must uphold the  
4 ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina*,  
5 674 F.3d at 1111. Here, the record shows that when Plaintiff took medication and followed a  
6 gastroparesis diet, his symptoms improved and were not as severe as alleged, and when Plaintiff  
7 did not, his symptoms worsened. Plaintiff has not shown the ALJ’s finding was not supported by  
8 substantial evidence. Therefore, in rejecting Plaintiff’s testimony regarding his gastroparesis, the  
9 ALJ did not err.

10 The ALJ also rejected Plaintiff’s testimony regarding his mental health, explaining it was  
11 inconsistent with objective medical evidence. AR 44–46. “When objective medical evidence in  
12 the record is *inconsistent* with the claimant’s subjective testimony, the ALJ may indeed weigh it  
13 as undercutting such testimony.” *Smartt*, 53 F.4th at 498. Here, the ALJ pointed to Plaintiff’s  
14 normal mental status examination, showing normal mood, affect, behavior, judgment, and  
15 thought content. *See* AR 723. The ALJ also pointed out that although Plaintiff endorsed  
16 hallucinations, he did not present as delusional and did not show any negative symptoms of  
17 schizophrenia. *See* AR 712. The record also includes mental status examinations showing  
18 Plaintiff stable, as well as normal psychiatric findings, even with Plaintiff’s reports of worsening  
19 symptoms. *See* AR 624, 677, 726, 782, 913, 1521, 1581, 1680. Given these findings, the ALJ  
20 could reasonably reject Plaintiff’s testimony. Plaintiff argues the ALJ failed to demonstrate  
21 contradiction between his testimony and the record, but does not cite any evidence supporting his  
22 argument. Dkt. 8 at 3. Therefore, Plaintiff has not met his burden of showing the ALJ harmfully  
23 erred. *Molina*, 674 F.3d at 1111.

**CONCLUSION**

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

DATED this 8<sup>th</sup> day of February, 2024.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE